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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCES FENNIMORE, individually and on behalf of all others similarly situated, Plaintiff(s) v. BANK OF AMERICA, N.A.; NATIONSTAR MORTGAGE, LLC; and DOES 1 through 10, inclusive, Defendant(s)	CLASS ACTION COMPLAINT 14 6883 **JURY TRIAL DEMANDED** Civil Action No.:____________________

Plaintiff FRANCES FENNIMORE ("Fennimore" or "Plaintiff"), on behalf of herself and all others similarly situated, alleges as follows:

INTRODUCTION

1. Plaintiff brings this action for damages arising from Defendant Bank of America, N.A. ("BOA") and Defendant Nationstar Mortgage, LLC ("Nationstar") breach of contract and other violations of the common law. In addition, Plaintiff asserts violations of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691e et seq., and violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., against Nationstar.

2. Plaintiff also brings this action on behalf of herself and a class of similarly situated homeowners across the Commonwealth of Pennsylvania to challenge the intentional and systematic failure to provide permanent mortgage loan modifications to borrowers who entered into and complied with the term of the Trial Period Plan Agreement ("TPPA").

3. Upon information and belief, the TPPA is part of a loan modification program offered to help delinquent borrowers remain in their homes through mortgage modification.

4. As set forth more fully below, BOA and Nationstar (collectively "Defendants") have serially failed to honor their express and implied contractual obligations, have made repeated misrepresentations of material fact, and have engaged in business practices that are deceptive, immoral, unscrupulous, unfair, and oppressive under federal and state law due to their failure to actually place Plaintiff and others similarly situated in a modified mortgage pursuant to their contractual obligations under TPPA.

5. As set forth below, Plaintiff and similarly situated homeowners complied with their obligations under the TPPA by making the required trial period payments.

6. In short, Plaintiff and others similarly situated complied with all material requirements of the TPPA. Despite Plaintiff's and similarly situated homeowners' performance of their contractual obligations, Defendants have ignored their contractual obligations by refusing to permanently modify Plaintiff's and others' loans.

7. Defendants' failure to permanently modify the loans they serviced was no accident. To the contrary, Defendants have knowingly established a system designed to wrongfully deprive those eligible for permanent loan modifications of an opportunity to modify their mortgages, pay their loans, and save their homes from foreclosure. Defendants' actions, constitute express and implied breaches of contract, and amounts immoral, unlawful, and unfair business practices under the common law.

8. Accordingly, through this Action, Plaintiff on behalf of herself and the class she seeks to represent, seeks enforcement of Defendants' contractual obligation to provide permanent loan modification.

9. Nationstar also violated the TPPA and, thus, further breached the contract, when it commenced foreclosure proceedings on Plaintiff and others similarly situated despite its

contractual agreement to explicitly do no such thing.

10. In addition, Nationstar also violated the ECOA by failing to advise Plaintiff and other similarly situated individuals that it was taking an adverse credit action against them and the reason(s) for the adverse action.

11. Finally, in the servicing of their mortgage loans, Nationstar sent Plaintiff and others similarly situated materials that were false, misleading, and/or inaccurate in the collection of a debt, as that term is defined under the FDCPA. Such action constitutes a violation of the FDCPA.

12. Upon information and belief, hundreds (if not thousands) of other individuals were adversely affected by Defendants' actions/inactions complained of herein.

THE PARTIES

13. Plaintiff is an adult individual who is a citizen of the Commonwealth of Pennsylvania, who resides in Philadelphia County.

14. Plaintiff is a "consumer," as that term is defined and/or contemplated within the scope of FDCPA.

15. Nationstar is a limited liability company, organized in the State of Delaware, registered to do business in the Commonwealth of Pennsylvania, and engaged in the business of debt collection within the Commonwealth of Pennsylvania. Upon information and belief, Nationstar's principal place of business is located at 350 Highland Drive, Lewisville, TX 75067.

16. BOA is a multinational banking and financial services corporation. BOA is a subsidiary of Bank of America Corporation with its headquarters located in Charlotte, North Carolina.

17. Plaintiff is unaware of the names and capacities of those defendants sued as

DOES 1 through 10, but will seek leave to amend this complaint once their identities become known to Plaintiff. Upon information and belief, Plaintiff alleges that at all relevant times each defendant, including the DOE defendants 1 through 10, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of another defendant, and in engaging in the conduct alleged herein was in the course and scope of and in furtherance of such relationship.

18. Unless otherwise specified, Plaintiff will refer to all defendants collectively as "Defendant" and each allegation pertains to each Defendant.

JURISDICTION AND VENUE

19. This Honorable Court has jurisdiction pursuant to 15 U.S.C. § 1692k and 28 U.S.C. § 1331.

20. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

21. The Eastern District of Pennsylvania is the proper venue for this litigation pursuant to 28 U.S.C. § 1391, as a substantial part of the acts or omissions giving rise to the claims alleged herein occurred within this judicial district, and the Defendant is subject to personal jurisdiction in this district.

FACTAL ALLEGATIONS

Plaintiff's Mortgage

22. In October of 2006, Plaintiff re-financed her home – located in Philadelphia, Pennsylvania – with Countrywide Bank, N.A.

23. At the closing, Plaintiff was presented with two loans from Countrywide Bank, N.A. – a primary loan and a secondary mortgage loan.

24. The secondary mortgage loan, in the principal amount of $17,280.00, included a

"balloon" fifteen-year payment, with a 9% yearly interest rate. A true and correct copy of this document (redacted for purposes of privacy) is marked and attached hereto as Exhibit "A."

25. Plaintiff's monthly payment on her second mortgage was $139.04 and her balloon payment was due October 1, 2021. Id.

26. In May of 2011, Plaintiff received a notice that, as of May 14, 2011, her mortgage loan was sold and/or transferred to Bank of New York ("BONY") and that her mortgage would be serviced by BOA.[1] A true and correct copy of this document (redacted for purposes of privacy) is marked and attached hereto as Exhibit "B."

27. Within the mortgage industry, entities that perform the actual interface with borrowers – including such tasks as payment processing and collection, payment remittance, escrow maintenance, loss mitigation, and foreclosure – are known as "servicers." A "servicer" typically acts as the agent of the creditor, who holds the mortgage loan.

28. During the events which serve as the basis for Plaintiff's complaint, BOA was the initial servicer of Plaintiff's mortgage followed by Nationstar.

29. In 2012, Plaintiff fell behind on both her primary and secondary mortgage loans.

30. Typically, when a homeowner is delinquent, servicers have a fiduciary responsibility to initiate loss mitigation practices within the framework established under their pooling and servicing agreement with the creditor.

31. Thus, because Plaintiff was delinquent, BOA initiated loss mitigation practices with respect to Plaintiff's mortgage.

[1] At certain times, it appears that Plaintiff's mortgage was serviced through "BAC Home Loans Servicing, LP" ("BAC"), a subsidiary of BOA. Importantly, Plaintiff received no documentation indicating that BAC was taking over or otherwise assuming the servicing of Plaintiff's mortgage from BOA. Rather, it appears that BOA and BAC were simply used interchangeably in communications/correspondence with Plaintiff.

32. While applying for the loan modification, she was instructed by BOA to stop making payments regarding her second mortgage loan until her first modification was complete.

33. After complying with the necessary requirements, Plaintiff secured a modification with BAC for her first mortgage sometime in 2012.

34. In August of 2013, Plaintiff received a letter from BOA, dated August 8, 2013 ("August Letter"), stating that she is "eligible for a modification program." This modification pertained to her second mortgage. A true and correct copy of this letter (redacted for purposes of privacy) is marked and attached hereto as Exhibit "C."

35. The August Letter was an offer of credit in the form of a loan modification.

36. The August Letter stated that **"[t]o qualify for a modification of your home equity account, you must complete a three month trial period**. If you complete the trial period successfully, we will offer you a permanent modification of your home equity loan." Exhibit "C." (Emphasis in original).

37. The August Letter was a TPPA – a commonly used method for initiating a mortgage modification. See, e.g., Cave v. Saxon Mortg. Servs., Inc., 2012 WL 1957588 *2 (E.D.Pa. 2012)(providing an example of a bank approving a homeowner for a three-month trial period with reduced monthly payments).

38. Upon information and belief, hundreds if not thousands of other individuals were sent letters substantially in the same form as the August Letter.

39. Importantly, the August Letter was unequivocal. Specifically, the August Letter stated that, if Plaintiff completed the TPPA, she would automatically be extended a loan modification and sent the necessary documentation. In pertinent part, the August Letter stated:

> You will receive a permanent modification of your account if you:
> a) pay each of the monthly trial period payments on time and in

> full, and b) sign and return the final Modification Agreement which will be sent to you once you have completed making your required trial payments. **Until you receive your final Modification Agreement in the mail, you should continue to make your monthly home equity payments in the amount of your trial period payments.**

Exhibit "C" (emphasis in original).

40. In short, the TPPA that was provided to Plaintiff was a unilateral contract – all she had to do was make the three required payments and she would be entered into a loan modification and sent the corresponding modification agreement.

41. The consideration Plaintiff provided was, among other things, compliance with the terms of the TPPA, including the payment of the modified loan amount for the initial three month trial period and thereafter until Defendant provided Plaintiff with a modified mortgage.

42. In addition, Plaintiff was advised that her credit score could "be affected by entering into" the TPPA. See Exhibit "C."

43. Per the terms of the TPPA set forth in the August Letter, Plaintiff was to make three payments of $209.64 to BOA, by the following dates:

a. October 1, 2013;

b. November 1, 2013; and

c. December 1, 2013.

See Exhibit "C."

44. Notably, Plaintiff's trial period payments due under the terms of the TPPA ($209.64) were well in excess of the amounts that were otherwise due per the terms of the original mortgage ($139.04).[2] See Exhibits "A" and "C."

45. Plaintiff made all three payments by the above-stated deadlines.

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[2] This additional amount due under the TPPA also serves as consideration for this contract.

46. In fact, Plaintiff made three payments of $210.00 to BOA on September 5, 2013, October 7, 2013, and November 1, 2013.

47. At no time while she was making these payments was Plaintiff asked to do anything more than what was set forth in the August Letter, nor was Plaintiff ever informed that she was deficient in any way in terms of fulfilling her TPPA requirements.

48. In late October of 2013, Plaintiff received a letter from BOA, stating that, as of November 15, 2013, her second loan was going to be assigned to Nationstar ("October Letter"). A true and correct copy of this letter (redacted for purposes of privacy) is marked and attached hereto as Exhibit "D."

49. Notably, the October Letter did not indicate that the terms under which Plaintiff's mortgage was serviced would change in any way. The October Letter also did not indicate that Plaintiff's relationship with her new mortgage servicer, Nationstar, would be materially different from her relationship with her old mortgage servicer, BOA.

50. Simply put, the October Letter indicated that Plaintiff's mortgage servicing agent was changing, but not the terms of her mortgage or the way in which it was serviced.

51. Importantly, because Plaintiff had already made the three trial payments, pursuant to the terms of the August Letter, Plaintiff should have been offered modification by BOA. See Exhibit "C." This did not happen.

52. Rather than be offered modification by BOA, Plaintiff received no further correspondence from BOA and the servicing of her loan was simply transferred to Nationstar.

53. Notably, when Plaintiff's loan was acquired by Nationstar for servicing, the loan was in default. This is because the offering of the TPPA did not automatically cure the delinquency in Plaintiff's mortgage payments. See Exhibit "C" ("Our acceptance and posting of

your new payment during the trial period . . . shall not constitute a cure of your default under your mortgage . . .").

54. Rather, Plaintiff's underlying mortgage would remain in default until her loan was modified. See Exhibit "C."

55. Importantly, the October Letter did not withdraw the TPPA or otherwise modify its terms. Rather, it stated unequivocally that "[i]f [Plaintiff is] currently being considered for a loan modification or other foreclosure avoidance program, [Nationstar] is aware of [Plaintiff's] current status and will have all of [Plaintiff's] documents." Exhibit "D."

56. After receiving the October Letter, Plaintiff attempted to communicate with Nationstar regarding a permanent modification of her second loan that she was promised, as she had complied with her contractual obligations under the TPPA – timely payment of the trial period payments.

57. However, like BOA, Nationstar made no effort to fulfill its obligations under the TPPA and provide Plaintiff with a permanent loan modification of her second loan.

58. To the contrary, despite the fact that Plaintiff has fully complied with her obligations under the TPPA, Nationstar promptly sent Plaintiff three separate "Act 91 Notices," dated December 27, 2013, January 15, 2014, and January 16, 2014. A true and correct copy of each Act 91 Notice (redacted for purposes of privacy) is marked and attached hereto as Exhibits "E" through "G," respectively.

59. An "Act 91 Notice" is a mandatory prerequisite under the Homeowner's Emergency Mortgage Act (hereinafter "Act 91"), 35 P.S. § 1680.401c et seq., for initiating a foreclosure of a residential mortgage in the Commonwealth of Pennsylvania. This notice must be sent by first class mail, as well as registered or certified mail. 12 Pa. Code § 31.203(a)(1). In

other words, a defaulted borrower receives two copies of an Act 91 Notice.[3]

60. Stated another way, and as made plain by the notice itself, the Act 91 Notice is an attempt to collect a debt.

61. In short, rather than receive confirmation of her loan modification, which was then due and owing as Plaintiff had complied with the necessary steps set forth in the August Letter and had fulfilled her obligations under the TPPA, Plaintiff was advised that Nationstar was taking an adverse action – the foreclosure of Plaintiff's home.

62. This was shocking news to Plaintiff as the August Letter made clear that foreclosure proceedings would not commence as long as she complied with the terms of the TPPA. See Exhibit "C" (in the section "Frequently Asked Questions" stating "As long as you comply with the terms of the Trial Period Plan, we will not start foreclosure proceedings . . .").

63. As set forth above, Plaintiff complied with the terms of the TPPA, as she made all of the necessary trial payments.

64. Further, after receiving the Act 91 Notices, Plaintiff was not sent any communication as to why, despite complying with the terms of the TPPA set forth in the August Letter, Nationstar was not advancing her credit in the form of the loan modification but was instead taking the adverse action of initiating foreclosure proceedings on her home.

65. Confusingly, despite receiving the Act 91 Notice documents within weeks of each other, each document directs Plaintiff to make a different payment and conveys a different "Next Payment Due Date." See Exhibits "E" through "G."

66. Upon information and belief, the variations in the amounts set forth in the Act 91

[3] Because of the Act 91 dual notice requirements, see 12 Pa. Code § 31.203(a)(1), in a span of less than three weeks, Plaintiff was sent six Act 91 Notices, threatening a foreclosure of her home, despite the fact that Plaintiff fully complied with her obligations under the TPPA.

Notices relates to the numerous late fees that Nationstar continued to assess against Plaintiff's account, despite the fact that Plaintiff had complied with the terms of the August Letter and, thus, should have been entered into a modified loan (wherein the late fees and other related fees would cease to accrue).

67. Consequently, upon information and belief, despite Plaintiff having made the requested payments per her contractual obligation set forth in the TPPA, Nationstar was failing to waive the late fees as it was obligated to under the TPPA. See Exhibit "C" ("any unpaid late fees which are owed at the time of the modification will be waived").

68. Moreover, the Act 91 Notices reflected that Plaintiff was improperly required to pay the sum of $510.99 for an "inspection." However, this was again confusing to Plaintiff as her underlying mortgage required her to be notified by certified mail of any upcoming inspections and she did not receive any such notice.

69. In short, Nationstar failed to comply with the terms of the underlying mortgage and, consequently, the Act 91 Notices were misleading and/or inaccurate.

70. Upon information and belief, Nationstar sent hundreds of individuals within the Commonwealth of Pennsylvania substantially similar Act 91 Notices, despite their compliance with the terms of their TPPAs.

71. Ultimately, as mandated by the August Letter, Plaintiff continued to send Nationstar monthly payments of $210.00. She made these payments through September of 2014.

72. To date, Nationstar has been placing payments "in suspense" and applies Plaintiff's payments towards the earliest defaulted amounts, which keeps Plaintiff in perpetual default.

73. Because of these tactics, Plaintiff has been unable to re-finance her loans with a

different lender.

74. Indeed, prior to receiving the Act 91 Notices, Plaintiff had no reason to refinance through another lender as she was expecting to receive a loan modification from Defendants as she had fully complied with the terms of the TPPA.

75. Despite complying with the terms of the TPPA (namely making the trial period payments), Plaintiff has not been sent a "final Modification Agreement" as BOA promised in the August Letter, nor otherwise offered a permanent loan modification.

76. Approximately fifteen months after receiving the August Letter, and one year after complying with the terms of the August Letter, Plaintiff received a letter in early November 2014 from Nationstar. The letter was dated October 30, 2014 (the "2014 Letter"). A true and correct copy of this letter is attached hereto as Exhibit "H" (redacted for purposes of privacy).

77. In pertinent part, the 2014 Letter stated that Nationstar "reviewed [Plaintiff's] request for assistance" and that her request was "declined" due to HAMP[4] Tier I and HAMP Tier II modifications being "Not Available" as these programs were not considered due to "eligibility requirement or requirements not met." Exhibit "H."

78. Further, Plaintiff was declined "Standard Modification" of her secondary mortgage due to "Investor or Guarantor Not Participating." Exhibit "H." Upon information and belief, the "Investor or Guarantor" referenced in the 2014 Letter was BONY.

79. Notably, although the 2014 Letter purports that Plaintiff did not qualify for "HAMP" modification because certain "eligibility requirements" were "not met," no requirements were delineated in the August Letter other than Plaintiff making the three trial

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[4] HAMP stands for the Home Affordable Modification Program ("HAMP"). It is a seventy-five billion dollar federal program designed to incentivize loan servicers, such as Defendants, to modify loans for certain qualified borrowers. The program arose from the recent home mortgage foreclosure crisis.

period payments. More fundamentally, the August Letter does not limit itself to only offering "HAMP" modification. Indeed, the term HAMP is not even disclosed in the August Letter.

80. Moreover, the August Letter made no mention of the offer being subject to the participation of the "Investor or Guarantor." See Exhibit "C." Indeed, the August Letter gave no indication that the "Investor or Guarantor" was involved in the process whatsoever. As detailed herein, the only qualifying language contained in the August Letter was that Plaintiff needed to make her timely payments – which she did.

81. As set forth above, Plaintiff made the necessary trial period payments well before the deadline.

82. Further, Defendants did not indicate in any correspondence with Plaintiff, including the 2014 Letter, that Plaintiff had failed to comply with the requirements of the TPPA.

83. Moreover, upon information and belief, Defendants knew or should have known whether BONY was participating in any "Standard Modification" before sending the August Letter and, in any event, well before the 2014 Letter was sent.

84. In short, the August Letter did not provide for any caveats or further requirements of Plaintiff, other than making the three trial period payments, in order to receive "permanent modification of [Plaintiff's] home equity loan." See Exhibit "C."

85. Thus, because Plaintiff complied with her requirements under the TPPA, Defendants were required to fulfill their contractual obligations under the TPPA and provide Plaintiff with permanent modification of her mortgage.

86. Defendants knew or should have known that their actions – failing to provide Plaintiff with permanent loan modification – violated the common law as their actions effectively constituted a breach of contract (the TPPA).

87. Defendants could have taken the steps necessary to comply with applicable law, but failed to do so and failed to review their actions to insure compliance with the law.

88. Nationstar also acted in a false, deceptive, misleading, and unfair manner, by using unfair or unconscionable means to collect or attempt to collect the debt purportedly at issue.

89. In addition, Nationstar violated the ECOA insofar as, after an offer of credit was extended to Plaintiff, Nationstar took an adverse action, the initiation of foreclosure proceedings through the sending of the Act 91 Notices, yet failed to inform Plaintiff of the reason(s) for this adverse action.

90. Upon information and belief, Nationstar did not send any notification of adverse action to any individual to whom it sent an Act 91 Notice within thirty days of determining to send one or more Act 91 Notices.

91. Defendants' conduct, as alleged herein, is (and was) deliberate, reckless, willful, and wanton.

92. Further, Plaintiff and the members of the Classes (as defined herein) have been (and will continue to be) damaged due to Defendants' conduct, as set forth herein.

93. Plaintiff and the members of the Classes have suffered and will continue to suffer damages, including actual and statutory damages, due to Defendants' conduct, as set forth herein.

94. Plaintiff avers that Defendants' conduct, as described herein, was not limited to the circumstances described herein, but was, and is, habitual, systematic, ongoing, and unrelenting in Defendants' business model and practice.

95. Plaintiff further states that Defendants' practices continue unabated and, left

unchecked, will continue beyond this case. Thus, judicial action is necessary in order to prevent Defendants from continuing to reap inappropriate sums from unsuspecting consumers, who risk losing their homes.

96. As a result of Defendants' conduct, Plaintiff has suffered from severe emotional distress. Indeed, because of the uncertainty surrounding Plaintiff's compliance with the TPPA and Defendants' subsequent failure to provide the contractually mandated loan modification, coupled with Plaintiff's receipt of the Act 91 Notices advising that Plaintiff was going to lose her home, Plaintiff has been required to take medication pursuant to her doctor's orders, and has suffered from loss of sleep, anxiety, and panic.

97. Upon information and belief, Defendants conduct complained of above was experienced by hundreds, if not thousands, of individuals across the Commonwealth of Pennsylvania.

Nationstar Is A Debt Collector

98. Nationstar is a "debt collector" as that term is defined under the FDCPA.

99. Nationstar regularly use an instrumentality of interstate commerce in a business of collection of debts in default and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due (or asserted to be owed or due) to another.

100. Indeed, Nationstar routinely accepts assignment of residential mortgage debts in default, solely for the purpose of facilitating collection of such debt for another. In doing so, Nationstar routinely uses the mail in its attempt to collect or attempt to collect, directly or indirectly, mortgage-related debts owed or due or asserted to be owed or due another.

101. For instance, Nationstar has initiated the following foreclosure lawsuits where it began servicing and/or was assigned and/or received the transfer of the underlying residential

mortgage after a default:

a. Nationstar Mortgage, LLC v. Bustamante, et al., April Term 2013, Docket No. 4986 (Philadelphia County), where the alleged default occurred in May of 2011, but the mortgage was not assigned to Defendants until March of 2013;

b. Nationstar Mortgage, LLC d/b/a Champion Mortgage Company v. Ogens, Docket No. 2013-006033 (Delaware County), where the alleged default occurred in May 2011, but the mortgage was not assigned to Defendants until May of 2013;

c. Nationstar Mortgage, LLC v. Gelfenson, et al., Docket No. 2013-04358 (Bucks County), where the alleged default occurred in November of 2011, but the mortgage was not assigned to Defendants until December of 2012; and

d. Nationstar Mortgage, LLC d/b/a Champion Mortgage Company v. Cimino, et al., Docket No. 2013-03844 (Bucks County), where the alleged default occurred in July of 2012, but the mortgage was not assigned to Defendants until November of 2012.

CLASS ACTION ALLEGATIONS

102. Plaintiff brings this action on behalf of herself and the below classes of similarly-situated individuals pursuant to Fed.R.Civ.P. 23.

103. Plaintiff first brings this action as a statewide class action on behalf of the following class of individuals:

> All natural persons in the Commonwealth of Pennsylvania who (i) had a home mortgage serviced by one or more of the Defendants,

> (ii) were offered a TPPA modification program, substantially in the same form as the August Letter, (iii) made the trial payments as required by the TPPA, and (iv) did not receive a mortgage modification in accordance with the terms of the TPPA (the "Modification Class").

104. Plaintiff also brings this action as a statewide class action against Nationstar on behalf of the following class of individuals:

> All natural persons in the United States who (i) had a residential home mortgage for a property located in the Commonwealth of Pennsylvania that was initially serviced by an entity other than Nationstar, (ii) were offered a TPPA modification program substantially in the same form as the August Letter, (iii) made the trial payments as required by the TPPA, (iv) had the servicing of their mortgage sold/transferred to Nationstar and did not receive a mortgage modification in accordance with the terms of the TPPA prior to the sale/transfer, and (v) were sent one or more Act 91 Notices from Nationstar seeking collection of money during the statutory period covered by this Complaint (the "Act 91 Class").

105. Plaintiff further brings this action as a statewide class action on behalf of the following class of individuals:

> All natural persons in the Commonwealth of Pennsylvania who (i) had a home mortgage serviced by Nationstar, (ii) were offered a TPPA modification program, substantially in the same form as the August Letter, (iii) made the trial payments as required by the TPPA, (iv) did not receive a mortgage modification in accordance with the terms of the TPPA, (v) were sent one or more Act 91 Notice(s), and (vi) were not sent a notice of action (the "ECOA Class").

106. The Modification Class, the Act 91 Class, and ECOA Class are collectively referred to as the "Classes."

107. The number of individuals in each of the Classes is so numerous that joinder of all members is impracticable. The exact number of members of the Classes can be determined by reviewing Defendants' records. Plaintiff is informed and believes, and thereon alleges, that there are well over fifty individuals in each defined Class.

108. Plaintiff will fairly and adequately protect the interests of the Classes, and has retained counsel that is experienced and competent in class action and consumer litigation, including, specifically, FDCPA litigation. Plaintiff has no interests that are contrary to, or in conflict with, members of the Classes.

109. A class action suit, such as the instant one, is superior to other available means for fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the Classes may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Classes to individually seek redress for the wrongs done to them.

110. A class action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent these actions, members of the Classes likely will not obtain redress of their injuries, and Defendants will retain the proceeds of their violations of applicable laws.

111. Furthermore, even if any member of the Classes could afford individual litigation against Defendants, it would be unduly burdensome to the judicial system. Concentrating this litigation in one forum will promote judicial economy and parity among the claims of individual members of the Classes and provide for judicial consistency.

112. There is a well-defined community of interest in the questions of law and fact affecting the Classes as a whole. The questions of law and fact common to each of the Classes predominate over any questions affecting solely individual members of the action.

113. Among the common questions of law and fact regarding the Modification Class are:

a. Whether the TPPAs obligated Defendants to permanently modify the loans of the customers they serviced;

b. Whether Defendants breached the express and implied terms of the TPPAs by failing to permanently modify their customers' loans;

c. Whether Defendants falsely communicated through written correspondence to Plaintiff and members of the Modification Class that their loans would be permanently modified; and

d. Whether Plaintiff and the members of the Modification Class have sustained damages and, if so, the proper measure of damages.

114. Among the common questions of law and fact regarding the Act 91 Class are:

a. Whether Nationstar is a debt collector, as that term is defined under the FDCPA;

b. Whether Nationstar sent "communications" as that term is defined under the FDCPA to members of the Class;

c. Whether Nationstar communications are attempts to collect a debt;

d. Whether Nationstar's communications violated the FDCPA;

e. Whether Nationstar was bound to the terms of the TPPA;

f. Whether Nationstar's actions in sending the Act 91 Notices violated the terms of the TPPAs; and

g. Whether Plaintiff and the members of the Act 91 Class have sustained damages and, if so, the proper measure of damages.

115. Among the common questions of law and fact regarding the ECOA Class are:

a. Whether Nationstar is a "creditor," as that term is defined in the ECOA;

b. Whether Nationstar is subject to the requirements of the ECOA;

c. Whether Nationstar's mailing of the ACT 91 Notice was an "adverse action" as defined by the ECOA;

d. Whether Nationstar violated the ECOA; and

e. Whether Plaintiff and the members of the ECOA Class have sustained damages and, if so, the proper measure of damages.

116. Plaintiff's claims are typical of the claims of members of the Classes. Plaintiff and members of the Classes have sustained damages arising out the same wrongful and uniform practices of Defendants.

117. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its continued maintenance.

COUNT I
BREACH OF CONTRACT AGAINST ALL DEFENDANTS
(on behalf of the Modification Class)

118. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

119. Plaintiff and members of the Modification Class were sent TPPAs in substantially the same form as the August Letter.

120. As set forth above the August Letter constitutes a TPPA.

121. The TPPA is an enforceable contract requiring Defendant to provide Plaintiff with a permanent loan modification. See Cave, supra; see also Corvello v. Wells Fargo Bank, 728 F.3d 878, 883-85 (9th Cir. 2013)(pointing out that the "natural and fair interpretation of the TPP[A]" is that the servicer must send a modification agreement "offering to modify the loan once borrowers meet their end of the bargain"); Wigod v. Wells Fargo Bank, 673 F.3d 547, 563 (7th Cir. 2012)(holding that the TPPA was an offer to provide a permanent modification

agreement if borrower fulfilled necessary conditions).

122. The TPPA contains an offer by BOA to provide Plaintiff and the members of the Modification Class with permanent loan modifications upon receipt of monthly trial period payments.

123. In addition, Nationstar assumed the contractual position of its servicing predecessor, BOA, to provide Plaintiff and the members of the Modification Class with permanent loan modifications upon receipt of monthly trial period payments.

124. Plaintiff and the members of the Modification Class fulfilled their obligations under the TPPA by making the necessary trial period payments.

125. Defendants materially breached their contractual obligation to permanently modify Plaintiff's and the Modification Class members' loans by failing to modify their loans as required by the TPPA.

126. Every contract contains an implied covenant requiring that neither party act to disrupt the other's ability to enjoy the benefit of the bargain. Furthermore, where a contract provides one of the parties with discretion or sole authority to carry out obligations under the agreement for the benefit of the other party, the party enjoying such discretion and authority may not abuse it or exercise it in such manner so as to deprive the other party of the benefit of the contract.

127. Defendants have intentionally and continuously acted in a manner so as to frustrate Plaintiff's and the Modification Class members' ability to obtain permanent modifications of their mortgages.

128. By failing to "book," record, or otherwise cause Plaintiff's and Modification Class members' modifications to be put into effect, Defendants have abused their authority under

the TPPA, frustrated Plaintiff's and the Modification Class members' ability to obtain the benefit of their TPPA contractual rights, and, accordingly, breached the implied covenant of good faith and fair dealing.

129. Defendants further breached the implied covenant of good faith and fair dealing by failing to "book," record, or otherwise cause Plaintiff's and Modification Class members' modifications to be put into effect and failing to disclose to Plaintiff and the Modification Class members Defendants' decision(s) to take such course of conduct.

130. Defendants' conduct and refusal to permanently modify Plaintiff's and the Modification Class members' loans – despite Plaintiff's and the Modification Class members' compliance with the TPPA – is part of a broader scheme to extract as much money as possible from distressed homeowners. As part of this scheme, Defendants string borrowers along for several months before they inevitably drop them from the modification process and begin foreclosure proceedings without warning.

131. As a result, Plaintiff and the Modification Class members suffered damages to be proven at trial, including (but not limited to):

a. Denial of the value of a permanent loan modification they should have received;

b. Denial of an opportunity to have their late fees waived;

c. Being charged late fees before and during the trial period and having their monthly payments improperly used for those fees;

d. Being charged improper inspection fees, as well as other administrative fees during the modification process, and having their monthly payments improperly used for those fees;

e. Being improperly reported as having a series of delinquent payments to the credit bureaus once their modifications were improperly denied or after they refused to make additional trial payments (beyond the three months required), as well as other damage to their credit, including increased total cost of credit;

f. Being deprived of an opportunity to refinance their loans or seek other means to mitigate their losses; and

g. Foreclosed on and disposed of their homes even though their loans should have been permanently modified.

132. To the extent that these damages present an inadequate remedy at law, Plaintiff and the Modification Class members are entitled to specific performance under the TPPA, requiring Defendants to provide them with permanent loan modifications, with Defendants incurring all costs, fees, and other charges to carry out such performance.

COUNT II
PROMISSORY ESTOPPEL AGAINST ALL DEFENDANTS
(on behalf of the Modification Class)

133. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

134. In the TPPA, Defendants, or their contractual predecessor which Defendants assumed the position of, expressly promised Plaintiff and the other Modification Class members that, if Plaintiff and the other Modification Class members complied with the terms of the TPPA, they would be offered a permanent loan modification.

135. Plaintiff and the Modification Class members reasonably relied on these promises and substantially performed their portion of the contract, including making their required

monthly payments. Had Plaintiff and the Modification Class members known that Defendants would subsequently improperly refuse to permanently modify their loans, they would have engaged in other efforts to save their homes, including alternative methods of financing that did not involve paying money to Defendants.

136. Despite Plaintiff and the Modification Class members contractual performance, Defendants failed to honor their promise to permanently modify Plaintiff's and the Modification Class members' loans.

137. Instead, Defendant Nationstar wrongfully attempted to foreclose on them.

138. As a result of Defendants' conduct, Plaintiff and the Modification Class members suffered damages in an amount to be determined at trial.

COUNT III
UNJUST ENRICHMENT
AGAINST DEFENDANT NATIONSTAR
(on behalf of the Modification Class)

139. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

140. At all relevant times, Nationstar had a willful policy and practice of denying Plaintiff and the members of the Modification Class permanent loan modifications, despite their compliance with the terms of the TPPA.

141. Plaintiff and the other Modification Class members have conferred benefits on Nationstar, including late fees that should not have been assessed and in the form of their homes that should not have been foreclosed on and/or repossessed.

142. Nationstar retained the benefits of its unlawful policy under circumstances which rendered it inequitable and unjust for Defendant to retain such benefits.

143. As direct and proximate result of Nationstar's unjust enrichment, Plaintiff and

the members of the Modification Class have suffered injury and are entitled to reimbursement, restitution and disgorgement from Nationstar of the benefits conferred by Plaintiff and the Modification Class.

144. Under such circumstances, equity and good conscience demand that Nationstar make restitution by returning the money paid by Plaintiff and members of the Modification Class after they completed making the trial period payments where no permanent loan modification was provided and by restoring borrowers with possession of their wrongfully taken homes.

COUNT IV
BREACH OF CONTRACT
AGAINST DEFENDANT NATIONSTAR
(on behalf of the Act 91 Class)

145. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

146. Plaintiff and members of the Act 91 Class were sent TPPAs in substantially the same form as the August Letter.

147. As set forth above the August Letter constitutes a TPPA.

148. The TPPA is an enforceable contract binding both Nationstar and members of the Act 91 Class, including Plaintiff, to perform certain actions and/or refrain from performing other actions.

149. The TPPA contains an offer by, among others, Nationstar to provide Plaintiff and the members of the Act 91 Class with permanent loan modifications and cease, suspend, and/or not initiate any foreclosure proceedings upon receipt of monthly trial period payments.

150. Plaintiff and the members of the Act 91 Class fulfilled their obligations under the TPPA by making the necessary trial period payments.

151. Nationstar materially breached its contractual obligation as it initiated foreclosure

proceedings through the sending of one or more Act 91 Notices despite the August Letter stating that Nationstar would refrain from initiating foreclosure proceedings provided that necessary trial period payments were made.

152. Every contract contains an implied covenant requiring that neither party act to disrupt the other's ability to enjoy the benefit of the bargain. Furthermore, where a contract provides one of the parties with discretion or sole authority to carry out obligations under the agreement for the benefit of the other party, the party enjoying such discretion and authority may not abuse it or exercise it in such manner so as to deprive the other party of the benefit of the contract.

153. Nationstar has intentionally and continuously acted in a manner so as to frustrate Plaintiff's and the Act 91 Class members' ability to obtain the benefit of the bargain insofar as Nationstar has initiated foreclosure proceedings.

154. By initiating foreclosure proceedings through the sending of the Act 91 Notices, Nationstar has abused its authority under the TPPA, frustrated Plaintiff's and the Act 91 Class members' ability to obtain the benefit of their TPPA contractual rights, and, accordingly, breached the implied covenant of good faith and fair dealing.

155. Nationstar further breached the implied covenant of good faith and fair dealing by failing to "book," record, or otherwise cause Plaintiff's and Act 91 Class members' modifications to be put into effect and failing to disclose to Plaintiff and the Act 91 Class members Defendant's decision(s) to take such course of conduct. Had Defendant complied with their duty of good faith and fair dealings, they, at a minimum, would have advised Plaintiff and members of the Act 91 Class of their decision not to modify their loans and thus enabled Plaintiff and Act 91 Class members the ability to protect themselves against Defendant's inappropriate

foreclosure proceedings.

156. As a result, Plaintiff and the Act 91 Class members suffered damages to be proven at trial, including (but not limited to):

a. Being deprived of an opportunity to refinance their loans or seek other means to mitigate their losses;

b. Being assessed improper inspection fees, as well as other administrative fees during the modification process, and having their monthly payments improperly used for those fees; and

c. Foreclosed on and disposed of their homes even though their loans should have been permanently modified.

157. To the extent that these damages present an inadequate remedy at law, Plaintiff and the Act 91 Class members are entitled to specific performance under the TPPA, requiring Nationstar to provide them with permanent loan modifications and/or restitution for improperly foreclosed upon homes, with Nationstar incurring all costs, fees, and other charges to carry out such performance.

COUNT V
PROMISSORY ESTOPPEL
AGAINST DEFENDANT NATIONSTAR
(on behalf of the Act 91 Class)

158. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

159. In the TPPA, which Nationstar assumed the contractual position of its predecessor server, Nationstar expressly promised Plaintiff and the other Act 91 Class members that, if Plaintiff and the other Act 91 Class members complied with the terms of the TPPA, Defendant would not commence foreclosure proceedings on them and they would be offered a permanent

loan modification.

160. Plaintiff and the Act 91 Class members reasonably relied on these promises and substantially performed their portion of the contract, including making their required monthly payments. Had Plaintiff and the Act 91 Class members known that Nationstar would subsequently improperly refuse to permanently modify their loans and would, instead, commence foreclosure proceedings, Plaintiff and the Act 91 Class members would have engaged in other efforts to save their homes, including alternative methods of financing that did not involve paying money to Nationstar.

161. Despite Plaintiff and the Act 91 Class members' contractual performance, Nationstar failed to honor its promise not to commence foreclosure proceedings. Instead, Nationstar wrongfully attempted to foreclose on them.

162. As a result of Defendant Nationstar's conduct, Plaintiff and the Act 91 Class members suffered damages in an amount to be determined at trial.

COUNTY VI
VIOLATION OF THE ECOA
AGAINST DEFENDANT NATIONSTAR
(on behalf of the ECOA Class)

163. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

164. In offering credit, including loan modifications, Nationstar is required to follow federal law, including ECOA.

165. Regulation B, codified at 12 C.F.R. § 202.9, governs ECOA notices and provides as follows:

> *Notification of action taken, ECOA notice, and statement of specific reasons –*

> (1) *When notification is required.* A creditor shall notify an applicant of action taken within:
>
> > (i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;
> >
> > (ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;
> >
> > (iii) 30 days after taking adverse action on an existing account; or
> >
> > (iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

12 C.F.R. § 202.9(a)(italics in original).

166. ECOA further states that a creditor must provide reasons for a denial of credit in the following fashion:

> Reasons for adverse action; procedure applicable; "adverse action" defined
>
> (1) Within thirty days (or such longer reasonable time as specified in regulations of the Bureau for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.
>
> (2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by –
>
> > (A) Providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken . . .
>
> * * *
>
> (6) For purposes of this subsection, the term "adverse action"

> means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit.

15 U.S.C. § 1691(d).

167. Nationstar is a "creditor," as defined by ECOA, 15 U.S.C. § 1691a(e), because it regularly extends, renews, or continues credit and/or regularly arranges for the extension, renewal, or continuation of credit and, in some cases, is an assignee of an original creditor, who participates in the decision to extend, renew, or continue credit.

168. Plaintiff and ECOA Class members who made three trial payments and complied with the terms of the TPPA are applicants for a permanent loan modification as defined by ECOA, 15 U.S.C. § 1691a(b).

169. Plaintiff and the ECOA Class members submitted "complete applications" for permanent loan modifications pursuant to 12 C.F.R. § 202.9(a)(1)(i) no earlier than the date which they made the third payment required by the TPPA.

170. Because Plaintiff and members of the ECOA Class complied with the terms of the TPPA, they should not have been designated as delinquent when Nationstar sent them the Act 91 Notices.

171. Nationstar took an adverse action against Plaintiff and members of the ECOA Class when it declined to modify Plaintiff and the ECOA Class members' loans and sent such individuals one or more Act 91 Notices.

172. The sending of the Act 91 Notice constitutes a communication for purposes of the ECOA.

173. Nationstar failed to provide notice of action taken to Plaintiff and the ECOA Class members within 30 days of its taking such adverse action.

174. As described herein, the actions of Nationstar violate the applicable provisions of the ECOA.

175. As result of Nationstar's violations of the ECOA, Plaintiff and the members of the ECOA Class have suffered damages in an amount to be determined at trial.

COUNT VII
VIOLATION OF THE FDCPA
AGAINST DEFENDANT NATIONSTAR
(on behalf of the Act 91 Class)

176. Plaintiff hereby incorporates all facts and allegations of this document by reference, as if fully set forth at length herein.

177. Nationstar is a "debt collector" as that term is defined under the FDCPA. See, e.g., Portley v. Litton Loan Servicing, 2010 WL 1404610 (E.D.Pa. 2010); Prince v. NCO Financial Services, 346 F.Supp. 2d 744, 747-49 (E.D.Pa. 2004)(finding that, for purposes of establishing a "debt collector" status under the FDCPA, the issue of whether a default exists is determined from the collector's records at the time it began servicing the obligations, regardless of the borrowers' contention that they were current on their obligations).

178. Section 1692d of the FDCPA provides that "[a] debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d.

179. Section 1692e provides that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e.

180. The FDCPA further explains that Section 1692e is violated, *inter alia,* when a

debt collector:

a. Creates a false impression of the character, amount, or legal status of any debt, 15 U.S.C. § 1692e(2);

b. Represents or implies that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action, 15 U.S.C. § 1692e(4);

c. Threatens to take any action that cannot legally be taken or that is not intended to be taken, 15 U.S.C. § 1692e(5);

d. Communicates (or threatens to communicate) to any person credit information which is known or which should be known to be false, 15 U.S.C. § 1692e(8); and

e. Uses any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer, 15 U.S.C. § 1692e(10).

181. Additionally, Section 1692f provides that "[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

182. Nationstar violated the above-referenced provisions of the FDCPA by engaging in the conduct described above.

183. Because Plaintiff and members of the Act 91 Class complied with the terms of the TPPA, they were not otherwise delinquent when Nationstar sent them communications stating they were in default and attempted to collect on the supposed past due mortgage payments.

184. Further, because Plaintiff and members of the Act 91 Class complied with the terms of the TPPA, Nationstar was not entitled to collect late fees from Plaintiff and members of the Act 91 Class. Despite this plain fact, the Act 91 Notices disseminated to Plaintiff and members of the Act 91 Class included such fees, thereby rendering the Act 91 Notices false and/or deceptive.

185. Nationstar acted in a false, deceptive, misleading, and unfair manner, by using unfair or unconscionable means to collect or attempt to collect the debt at issue.

186. Nationstar knew or should have known that its actions violated the FDCPA.

187. Nationstar could have taken the steps necessary to comply with the FDCPA, but Nationstar neglected to do so and failed to adequately review those actions to insure compliance with the law.

188. As described herein, the actions of the Nationstar violates the applicable provisions of the FDCPA.

189. As result of Nationstar's violations of the FDCPA, Plaintiff and the members of the Act 91 Class have suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

a. Certify this case as a class action and appoint the Plaintiff to be class representative for each class and her counsel to be class counsel;

b. Enter a judgment declaring the acts and practices of Defendants complained of herein to constitute a breach of contract, as well as a declaration that they are required by the doctrine of specific performance and/or promissory estoppel to offer permanent modifications to Plaintiff and Modification Class members on the terms set forth in their TPPAs, together with an award of monetary damages and other available relief on those claims;

c. Order specific performance of Defendants' contractual obligations together with other relief required by contract and law;

d. Grant a permanent or final injunction enjoining Defendants' agents and employees, affiliates and subsidiaries, from continuing to harm Plaintiff and the members of the respective Classes;

e. A Declaration that Nationstar violated the applicable provisions of the ECOA;

f. A Declaration that Nationstar has violated the applicable provisions of the FDCPA;

g. An Order enjoining Defendants from any further violations of applicable common law;

h. An Order enjoining Nationstar from any further violations of the ECOA and FDCPA;

i. Actual damages;

j. Punitive damages;

k. Statutory damages;

l. Attorneys' fees and costs; and

m. Such other relief as the Honorable Court shall deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

(SIGNATURE ON THE NEXT PAGE)

Date: December 3, 2014

Respectfully submitted,
KALIKHMAN & RAYZ, LLC

/s/

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